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 NORTHERN DISTRICT OF CALIFORNIA

5 IN THE UNITED STATES DISTRICT COURT
 6
 7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

HSG

Case No.:

CV17**3**

VERIFIED COMPLAINT FOR
 LEGAL, DECLARATORY, AND
 INJUNCTIVE RELIEF

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 11 Darryl Carter,

12 Plaintiff,

13 vs.

14
 15 Uber Technologies, Rasier-CA, LLC,

16 Travis Kalanick

17
 18 Defendants

29 U.S.C. § 201 ET SEQ.,
 29 U.S.C. § 216 (b),
 29 U.S.C. § 217,
 28 U.S.C. § 2201,
 INTENTIONAL
 MISREPRESENTATION,
 NEGLIGENCE MISREPRESENTATION,
 NEGLIGENCE INFLECTION OF
 EMOTIONAL DISTRESS,
 IMPLIED COVENANT OF GOOD
 FAITH AND FAIR DEALINGS

JURY TRIAL DEMANDED

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26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF

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Rasier-CA, LLC is a wholly owned subsidiary of Uber Technologies collectively herein referred to as Uber. The CEO and co-founder of Uber, is Travis Kalanick. Mr. Kalanick is, also, a resident of the state of California. Upon information and belief, Mr. Kalanick oversees Uber policies and driver contracts which are made or solidified following Mr. Kalanick's expressed authority, approval and/or review. Furthermore, upon information and belief Mr. Kalanick oversees the hiring of and establishment of direction and goals for key personnel related to virtually all if not all areas of the business including but not limited to marketing, advertising, and Uber growth.

Darryl Carter is an individual residing in the State of California, within the Northern District of California, and is the Plaintiff in this action.

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1 Plaintiff brings this action pursuant 29 U.S.C. § 201 et seq. Plaintiff seeks
2 judgment for declaratory and injunctive relief along with monetary damages. This
3 Court has jurisdiction of this civil proceeding pursuant to 29 U.S.C. § 216 (b), 29
4 U.S.C. § 217 and 28 U.S.C. § 1367.
5

6 4.
7

8 Venue lies in the Northern District of California pursuant 28 U.S.C. §§ 1391 (b).
9 Moreover, Defendant Uber Technologies and/or Rasier-CA, LLC has its principal or a
10 primary location located at 1455 Market St., Ste. 400, San Francisco CA 94103. Lastly
11 such address as set forth ante is explicitly and specifically listed in Uber's driver
12 (referred to as Uber Partner) agreement.
13
14

15 **FACTUAL BACKGROUND**
16

17 5.

18 On or around Wednesday September 14, 2016 at 1:08 p.m. at Starbucks in San
19 Mateo, CA, Plaintiff read Uber marketing information stating specifically and
20 explicitly: "Be your own boss with Uber"; "Control your earnings potential"; "Set your
21 own hours." See **Exhibit A**.
22
23

24 6.

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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 Plaintiff had very little cash on hand to pay for special training or schooling.
2 Uber required its prospective California drivers to: possess a valid class "C" driver
3 license (for at least 1 year), possess liability insurance, pass a background check, and a
4 vehicle 2001 or newer.
5

6
7 7.

8 Upon reviewing Uber's marketing information as published on Uber's website
9 (FACT ¶ 5), Plaintiff decided to move forward with driving for Uber. Plaintiff set up
10 an appointment for a vehicle or around October 19, 2016 at or around 11:00 a.m. with
11 an authorized Uber dealer Autocom Nissan of Walnut Creek, CA.
12

13
14 8.

15 Per Uber's vehicle requirements, Plaintiff's 1999 Toyota Camry did not qualify,
16 merely, because the 1999 Toyota Camry was not a 2001 or newer model car. See
17 **Exhibit B.**
18

19
20 9.

21 On same day, October 19, 2016 at or around 11:00 a.m. Plaintiff purchased a
22 vehicle at Autocom Nissan of Walnut Creek, CA. Under the vehicle purchasing
23 program, as a driver for Uber, the program allowed for a cash out of pocket down
24

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26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 payment of only \$250. Plaintiff paid \$250 and purchased the vehicle specifically to
2 drive for Uber.
3
4

5 10.

6 On or around October 19, 2016 at 5:57 p.m. Plaintiff signed up to drive for Uber
7 (referred to as a “Uber Partner”) following successful vehicle inspection at Uber’s
8 vehicle inspection location at or near Martinez, CA.
9
10

11 11.

12 As part of signing up as an Uber driver (referred to as Uber Partner), Plaintiff
13 was required to enter a contract with Rasier-CA, LLC (a wholly owned subsidiary of
14 Uber Technologies). If Plaintiff were to disagree to the contract or any terms thereof
15 Plaintiff would not be able to sign up and earn fares with Uber. See Exhibit C.
16
17

18 12.

19 On or around October 26, 2016 at 9:53 a.m. Plaintiff sent an “Arbitration Opt-
20 Out” email to the email address identified in the contract with Rasier-CA, LLC, in
21 which Plaintiff specifically and explicitly expressed his intent to opt-out of any binding
22 arbitration. See Exhibit D.
23
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25 ~ 8 ~

26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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13.

1 On or around October 21, 2016, Plaintiff began accepting User transportation
2 requests with Uber. The last date Plaintiff accepted a User transportation request was
3 November 28, 2016.
4

5 14.

6 On November 22, 2016 at around 5:18 p.m. Plaintiff sent a support request to
7 Uber with respect to an issue with a User. Plaintiff complained of being insulted,
8 accident safety, and a threat from the User, whom Plaintiff understood and believed to
9 be an Uber non-driver employee.
10
11

12 15.

13 On or around December 21, 2016 at around 8:47 a.m. Plaintiff, from within his
14 vehicle, attempted to sign on to the Uber Driver App and was unable to do so. A
15 “security check” prevented Plaintiff from signing on to earn fares, when Plaintiff
16 elected to work and earn fares. See Exhibit E.
17
18

19 16.

20 On or around December 21, 2016 at around 8:47 a.m., Plaintiff sent an Uber
21 support request notifying Uber of the security check issue preventing Plaintiff from
22 signing into the Uber Driver App in effect interfering with Plaintiff’s earnings. Uber
23
24

25 ~ 9 ~

26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 later responded essentially stating Plaintiff's Uber Driver App account was active. See
2 **Exhibit F.**
3

4 17.

5 Plaintiff sent Uber a follow up Uber support message begging Uber support to
6 resolve the issue. Plaintiff notified Uber support in the same suppt message that a
7 legal complaint would be filed if the security check issue continued to interfere with
8 Plaintiff's earnings. Uber support responded now stating that a "technical issue" was
9 affecting some drivers. See **Exhibit G.**
10
11

12 18.

13 Since initially being prevented from signing on to the Uber Driver app on or
14 around December 21, 2016 at 8:47 a.m., Plaintiff has attempted several times to sign
15 on to the Uber Driver App, each time prevented from signing on to the Uber Driver
16 App due to the same security check (FACT ¶ 15).
17
18

19 19.

20 Plaintiff has not earned any fares with Uber since the initial security check
21 prevented him from signing onto the Uber Driver App.
22

23 20.
24

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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 The phrase shown in Uber Driver App, "security check" does not appear
2 anywhere in the contract which Plaintiff was required to agree to as a condition to
3 signing up to driver for Uber which Uber refers to as a "Uber Partner."
4

5 21.

6 At no time was it ever disclosed to Plaintiff that Plaintiff would have to submit
7 to a security check or persistent security checks as a condition to signing on to earn
8 fares when Plaintiff elected to sign on to earn income.
9

10 22.

11 On December 29, 2016 at or around 8:45 a.m. Steve Matias with SFO ground
12 transportation compliance informed Plaintiff that Uber had 40,000 registered drivers.
13
14

15 23.

16 After learning of the 40,000 registered drivers, Plaintiff discovered Uber was
17 and is apparently focused on "Uber Growth" which includes increasing the volume of
18 Uber drivers (which Uber refers to as Uber partners) on the road receiving User
19 transportation requests.
20
21

22 24.

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25 ~ 11 ~

26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 At no time prior to (FACT ¶ 23) was Plaintiff aware of Uber's 40,000 registered
2 drivers prior to Plaintiff purchasing the vehicle to driver for Uber.
3

4 25.

5 Upon information and belief Plaintiff understands that Uber has ongoing Uber
6 driver recruitment efforts which Plaintiff believes acts an Uber driver (which Uber
7 refers to as Uber Partner) revolving door.
8

9 26.

10 Plaintiff has ongoing direct costs of driving for Uber (which Uber refers to as an
11 Uber Partner) of approximately \$472 weekly. This figure included car payments,
12 insurance, vehicle maintenance, wear & tear, and gasoline. Plaintiff was never
13 reimbursed for any of the stated direct costs accrued for any week in which Plaintiff
14 earned fares with Uber.
15
16

17 27.

18 Plaintiff's ongoing direct costs of driving for Uber (which Uber refers to as an
19 Uber Partner) of approximately \$472 weekly does not include any taxes whatsoever
20 such as self-employment tax, social security tax, or any contribution to unemployment
21 insurance tax.
22
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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 28.

2 Uber sets and controls the fare model and collection of fares from the User.
3
4 Plaintiff is not involved with the collection of or a price estimate of what a User will
5 pay as a fare. Uber's fare model includes: Base (fee/fare) + Time + Distance. See
6 **Exhibit H.**
7

8 29.

9 Uber employs what is referred to as a five-star rating system. As of the time,
10 Plaintiff last earned a fare with Uber, he was required to maintain a 4.8 rating in which
11 Plaintiff's ratings are exclusively provided by Users. Plaintiff's failure to maintain the
12 required driver rating could result in Plaintiff being compelled for "training" and/or
13 deactivation from the Uber Driver App.
14
15

16 30.

17 Upon information and belief Uber serves two masters, one being the User and
18 the other being the driver or what Uber refers to as an Uber partner. Plaintiff believes,
19 in this type of relationship Plaintiff has been or easily can be exploited and "hung out
20 to dry" since Uber obtains revenue directly from the User.
21
22

23 31.

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26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 A User cannot request Plaintiff as a preferred driver (what Uber refers to as
2 Uber partner) using either an UberX or UberPool transportation request. The good will
3 for a job well done by Plaintiff effectively transfers to Ube , which Plaintiff has
4 witnessed being referred to by Users as a “Good Uber Driver.”
5

6 32.
7

8 The U.S. Department of Labor, Wage and Hour Division published □d supports
9 the economic realities test to determine if a worker “is economically dependent on an
10 employer who can require (or allow) employees to work and who can prevent
11 employees from working.” See Exhibit I.
12
13
14
15

16 COMMON ALLEGATIONS

17 33.
18

19 Contrary to Uber’s assertions in the driver (referred to as Uber artner)
20 agreement, Uber Technologies is not merely a technology compan providing
21 technology services. Uber drivers or Uber partners are essential□tUber earning
22 revenue from Users. Without Uber drivers or Uber partners, Uberould earn no
23 income from the alleged technology service that connects Users with Uber drivers.
24

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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
28

1 34.

2 Furthermore U.S. Department of Labor's Wage and Hour Division policies
3 and/or interpretations, in certain circumstances, are, generally, entitled to some
4 deference. See *Christensen v. Harris County*, 529 U.S. 576, 587 (2000); *Chevron*, 467
5 U.S. at 842; *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).
6
7

8 35.

9 Even in a self-driving car scenario, specifically in the state of California, Uber
10 has, previously, admitted that such a technology is not ready to function without a
11 human operator in the vehicle that could assume control of the vehicle. Furthermore,
12 Uber's permit to operate and test the self-driving car pilot program/technology was
13
14
15 revoked by the California DMV on or around December 21, 2016.
16

17 36.

18 The fares Plaintiff received as payout or wages did not account or the
19 significant cost of operating and maintaining equipment which equipment Plaintiff
20 purchased through incurring debt. Even when driving for Uber, Plaintiff noticed
21 quickly that the numbers did not seem to add up in terms of the prevailing minimum
22 wage.
23
24

25 ~ 15 ~

26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 37.

2 Moreover, upon information and belief, through what seemed to Plaintiff to be
3 an unusually high number of UberPool requests compounded with \$5.00 (before
4 Uber's commission of 25%) User ride cancellation fees, and wait times online in
5 "driver mode" there were periods or hours where Uber paid Plaintiff \$3.75 or less in
6 fares; at no time was Plaintiff paid overtime wages.
7

8 38.

9 Plaintiff upon information believes Uber has a backdoor into what Plaintiff
10 refers to as Uber's Ride Request Management System ("RRMS") whereas Uber can
11 and does control which Uber drivers (referred to as Uber Partners) can drive and earn
12 wages as Uber sees fit. Moreover, Plaintiff believes that Uber can peer into its RRMS
13 and forward User ride requests to Uber drivers to pick up a User in an "undesirable
14 area" – which is defined as an area with low or no volume User ride requests. On more
15 than one occasion, Plaintiff was sent 20, 30, 40 or more miles away to transport a User
16 to an area such as Santa Cruz, CA and surrounding areas whereas Plaintiff had to drive
17 back to desirable or high volume User ride request areas on his own dime, in whole or
18 part.
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25 ~ 16 ~

26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 39.

2 Uber's "driver undesirable location" practices have led Plaintiff, on more than
3 one occasion, to "drive around" seeking desirable User ride request locations, in hopes
4 of obtaining a User ride request, which, ultimately, has led to Plaintiff driving more
5 than 8,000 miles (in less than two short months) since acquiring the vehicle,
6 specifically, to drive for Uber.
7

8 40.

9 At a rate of 8,000 miles or more driven continuously, even if Plaintiff was
10 allowed by Uber to do so, would likely amount to the usefully life of the vehicle
11 exhausted in 3 years if not faster, whereas the debt incurred to acquire the equipment
12 would continue years beyond such useful equipment life.
13

14 41.

15 Plaintiff further believes, the unreimbursed equipment expenses acquired to
16 drive, specifically, for Uber compounded with Plaintiff's compulsory tax obligations
17 essentially equates the relationship with Uber, per Uber's contractual agreement, as
18 one of indentured servant labor whereas there is no real opportunity for profitability.
19

20 42.

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22 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 Plaintiff further believes such a relationship has been and/or would be especially
2 beneficial to Uber as Uber would actively maintain Plaintiff and other Uber drivers,
3 longer, in turn earning a massive windfall volume of fares for Uber, with Plaintiff,
4 hopelessly, trying to pay down equipment debt and earn a living in the process.
5

6
7 **CAUSES OF ACTION**

8
9 **COUNT I**

10
11 **FSLA MINIMUM WAGE CLAIM**

12 43.

13 Plaintiff incorporates ¶¶ 1-42 as though fully set forth herein.
14

15 44.

16 Upon information and belief, Defendant Uber and/or Mr. Kalanick is, has been
17 and continues to be an employer engaged in commerce (interstate) and/or in the
18 production of goods for commerce as defined per 29 U.S.C. § 203.
19

20 45.
21
22
23
24

1 Plaintiff further believes, during the relevant times, stated herein, Defendant
2 Uber and/or Mr. Kalanick employed Plaintiff as an employee as defined in 29 U.S.C. §
3
4 203.

5 46.

6 Defendant Uber and/or Mr. Kalanick as an employer was required to pay
7
8 Plaintiff the prevailing minimum wage per the FLSA for each hour worked.

9 47.

10
11 Upon information and belief Uber and/or Mr. Kalanick knowingly and willfully
12 did not pay Plaintiff the prevailing minimum wage, for each hour worked, under the
13 FLSA.
14

15 48.

16 Plaintiff seeks recovery of damages for unpaid compensation and/or wages,
17 FLSA liquidated damages, costs, and any other relief the Court deems just and proper.
18
19
20

21 **COUNT II**

22
23 **FLSA OVERTIME WAGE CLAIM**

24 49.

25 ~ 19 ~

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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
28

1 Plaintiff incorporates ¶¶ 1-48 as though fully set forth herein.

2 50.

3
4 Upon information and belief Plaintiff worked more than forty (40) hours per
5 week during the relevant period as identified herein.

6 51.

7
8 Plaintiff further believes that Defendant Uber and/or Mr. Kalanick knowingly
9 and willfully did not pay Plaintiff overtime wage for each hour worked exceeding forty
10 (40) hours per work-week.

11 52.

12
13 Plaintiff seeks recovery of damages for unpaid overtime compensation and/or
14 wages, FLSA liquated damages, costs, and any other relief the ourt deems just and
15 proper.
16

17
18 **COUNT III**

19
20 **FSLA RECOVERY OF EQUIPMENT COSTS CLAIM**

21 53.

22
23 Plaintiff incorporates ¶¶ 1-52 as though fully set forth herein.

24 54.

25 ~ 20 ~

26
27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
28

1 Upon information and belief, Defendant Uber and/or Mr. Kalanick, required
2 Plaintiff to pay the costs and expenses for purchasing, acquiring and maintaining
3 insurance, and maintenance of the equipment, which equipment was essential and
4 required for Plaintiff to perform his job, thereby reducing Plaintiff's wages below the
5 prevailing minimum wage per 29 U.S.C. § 206 (a); 29 C.F.R. §531.35 .
6
7

8 55.

9 Upon information and belief Defendant Uber and/or Mr. Kalanick knowingly
10 and willfully violated the provision of the FSLA, whereas Plaintiff is entitled to
11 recover all monies paid for the required and essential equipment i.e. "tools of the
12 trade," which was, specifically, acquired and used in furtherance of Uber and/or Mr.
13 Kalanick's business. Moreover, Plaintiff seeks recovery of the costs of this action,
14
15
16 liquidated damages, and pre-judgment interest as determined.
17

18 **COUNT IV**

19
20 **INTENTIONAL MISREPRESENTATION**

21 56.

22 Plaintiff incorporates ¶¶ 1-42 as though fully set forth herein.
23

24 57.

25 ~ 21 ~

26
27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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Upon information and belief, Uber, under the direction, authority or permission of Mr. Kalanick represented to Plaintiff that he would be his own boss, have control over his hours worked and therefore control over his earnings per statement of fact, hereinafter, ("SOF") ¶ 5. Plaintiff further believes Mr. Kalanick knew that Plaintiff would not truly be his own boss but, in reality, Mr. Kalanick exercised considerable control over Plaintiff's ability to work and therefore control over Plaintiff's earnings.

58.

Furthermore, Plaintiff believes Mr. Kalanick's representations were intentionally made to induce Plaintiff into a contractual agreement as an Uber driver (referred to as Uber Partner). Plaintiff believes the motive for such inducement was to create a long or longer term Uber driver (referred to as Uber Partner) contractual relationship whereas Uber could earn fares for longer periods of time, all the while avoiding payment of federal and/or state employee related tax(es) with respect to Uber and/or Mr. Kalanick's relationship with Plaintiff, which Plaintiff further believes would be and is consistent with Uber's growth strategy.

59.

1 Plaintiff having no reason to question Mr. Kalanick's representations, prior to
2 establishing a relationship with Mr. Kalanick, relied on Mr. Kalanick's representations,
3 as Plaintiff saw a ubiquitous presence of Uber including signage at major coliseums
4 and ball parks such as Oracle Arena, SAP Center, and Levi Stadium, along with radio
5 advertising to recruit drivers (referred to as Uber Partners) on local San Francisco bay
6 area radio stations, and even songs such as "Uber Everywhere." Furthermore, Plaintiff
7 never worked for Mr. Kalanick in the past and was unaware that Mr. Kalanick's
8 representations would be or could be false.
9
10
11

12 60.

13 Plaintiff, since relying on Mr. Kalanick's representations, has been injured in
14 that Plaintiff has not been able to act as his own boss, by going online into "Driver
15 Dode" via the Uber Driver App to earn fares. Such has resulted in a significant loss in
16 earnings and ability to satisfy debt incurred to purchase equipment specifically to drive
17 for Uber.
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19
20

21 **COUNT V**

22
23 **NEGLIGENT MISREPRESENTATION**

24 61.

25 ~ 23 ~
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VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF

1 Plaintiff incorporates ¶¶ 1-42 as though fully set forth herein.

2 62.

3
4 Upon information and belief Uber, under the direction, authority or permission
5 of Mr. Kalanick represented to Plaintiff that he would be his own boss, have control
6 over his hours worked and therefore control over his earnings per statement of fact,
7 hereinafter, ("SOF") ¶ 5. Plaintiff further believes Mr. Kalanick did not have a
8 reasonable basis to assert that Plaintiff would be his own boss but that Mr. Kalanick
9 truly would be and is Plaintiff's boss. Plaintiff further believes Mr. Kalanick is
10 Plaintiff's boss through Mr. Kalanick's exercising considerable control over Plaintiff's
11 ability to work and therefore control over Plaintiff's earnings.
12
13
14

15 63.

16 Furthermore, Plaintiff believes Mr. Kalanick's representations were
17 intentionally made to induce Plaintiff into a contractual agreement as an Uber driver
18 (referred to as Uber Partner). Plaintiff believes the motive for such inducement was to
19 create a long or longer term Uber driver (referred to as Uber Partner) contractual
20 relationship whereas Uber could earn fares for longer periods of time, all the while
21 avoiding payment of federal and/or state employee related tax(es) with respect to Uber
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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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1 and/or Mr. Kalanick's relationship with Plaintiff, which Plaintiff further believes
2 would be and is consistent with Uber's growth strategy.
3

4 64.

5 Plaintiff having no reason to question Mr. Kalanick's representations, prior to
6 establishing a relationship with Mr. Kalanick, relied on Mr. Kalanick's representations,
7 as Plaintiff saw a ubiquitous presence of Uber including signage at major coliseums
8 and ball parks such as Oracle Arena, SAP Center, and Levi Stadium, along with radio
9 advertising to recruit drivers (referred to as Uber Partners) on local San Francisco bay
10 area radio stations, and even songs such as "Uber Everywhere." Furthermore, Plaintiff
11 never worked for Mr. Kalanick in the past and was unaware that Mr. Kalanick's
12 representations would be or could be false.
13
14
15

16 65.

17 Plaintiff, since relying on Mr. Kalanick's representations, has been injured in
18 that Plaintiff has not been able to act as his own boss, by going online into "driver
19 mode" via the Uber Driver App to earn fares. Such has resulted in significant loss in
20 earnings and ability to satisfy debt incurred to purchase equipment specifically to drive
21 for Uber.
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26 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
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COUNT VI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

66.

Plaintiff incorporates ¶¶ 1-65 as though fully set forth herein.

67.

Upon information and belief Defendant Uber and/or Mr. Kalanick had and/or has a duty to allow Plaintiff to “Be His Own Boss” and “Work When He Wanted to Work” and not interfering with Plaintiff’s earnings. Plaintiff further believes such duty is evidence by Uber’s agreement with Plaintiff as an Uber driver (referred to as an Uber Partner).

68.

Upon information and belief, Defendant Uber and/or Mr. Kalanick breached such duty by, directly and/or indirectly, interfering with Plaintiff’s earnings by injecting or otherwise allowing a “technical issue” to persist thereby preventing Defendant from going online in “Driver Mode” in exercising his prerogative to work when he wanted to work as his own boss.

69.

~ 26 ~

VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF

1 Upon information and belief, Defendant Uber and/or Mr. Kalanick's breach of
2 duty owed Plaintiff, is the direct and proximate cause of Plaintiff's serious and
3 persistent emotional distress including serious anxiety with respect to his ability to
4 meet financial obligations for equipment purchasing specifically to work for Uber,
5 persistent worry, physical and mental pain and suffering, and mental anguish.
6
7

8 **COUNT VII**
9

10 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**
11

12 **DEALINGS**

13 70.

14 Plaintiff incorporates ¶¶ 1-69 as though fully set forth herein.
15

16 71.

17 Upon information and belief, Plaintiff entered a contractual agreement with
18 Uber and/or Mr. Kalanick. Plaintiff held up his end of the bargain and performed per
19 the terms of the agreement including Plaintiff maintaining a 4.88 driver rating, a least 9
20 compliments on Plaintiff's service as submitted to Uber by Users, a host of "badges"
21 accumulated such as "entertaining driver", "excellent service", "above and beyond",
22 "neat and tidy" and so on. In doing so, the conditions were met for Uber to meet its
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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
28

1 end of the bargain, yet Uber failed to do so through repeated bogus “security checks”
2 which Plaintiff believes were not in good faith but were put into place after Plaintiff
3 complained to Uber on November 22, 2016 of an incident which □ Plaintiff believes
4 involved an Uber employee.
5

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7 72.

8 Furthermore, Plaintiff believes he had every right to receive the benefits as
9 outlined in the agreement and would have done so but for Uber’s interference with
10 Plaintiff’s ability to be his own boss and exercise his supposed right to work when he
11 wanted to, which Uber and/or Mr. Kalanick had a duty to refrain from such
12 interference with Plaintiff’s ability to be his own boss. Uber’s and/or Mr. Kalanick’s
13 interference with the benefits as outlined in the agreement has caused Plaintiff a
14 significant loss in earnings and Plaintiff has consistently and persistently, since first
15 reporting the interference to Uber, been unable to log on into “driver mode” and earn
16 fares.
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21 **PRAYER**

22 WHEREFORE, Plaintiff prays for judgment against Defendant Uber and/or Mr.
23 Kalanick as follows:
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27 VERIFIED COMPLAINT FOR LEGAL, DECLARATORY, AND INJUNCTIVE RELIEF
28

1 **Regarding the first claim of relief:**

- 2 1. Recovery of unpaid compensation and/or wages, FLSA liquated damages, and
3 costs.
4
5 2. Declare Plaintiff an employee of Uber and/or Mr. Kalanick.
6
7 3. Enjoin Uber and/or Mr. Kalanick from further violations of the FSA with
8 respect to Plaintiff.

9 **Regarding the second claim of relief:**

- 10 1. Recovery of unpaid compensation and/or wages, FLSA liquated damages, and
11 costs.
12
13 2. Declare Plaintiff an employee of Uber and/or Mr. Kalanick.
14
15 3. Enjoin Uber and/or Mr. Kalanick from further violations of the FSA with
16 respect to Plaintiff.

17 **Regarding the third claim of relief:**

- 18
19 1. Recovery of the costs of this action, liquidated damages, and pre-judgment
20 interest.
21
22 2. Declare Plaintiff an employee of Uber and/or Mr. Kalanick.
23
24 3. Recovery of equipment purchasing costs of \$28,000.

1 4. Enjoin Uber and/or Mr. Kalanick from further violations of the FSA with
2 respect to Plaintiff.
3

4 **Regarding the forth claim of relief:**

- 5 1. Void the contractual agreement between Uber and/or Mr. Kalanick and Plaintiff.
6
7 2. Exemplary damage per Cal. Civ. Code § 3294.
8
9 3. Economic and non-economic damages of \$50,000.

10 **Regarding the fifth claim of relief:**

- 11 1. Void the contractual agreement between Uber and/or Mr. Kalanick and Plaintiff.
12
13 2. Economic and non-economic damages of \$50,000.

14 **Regarding the sixth claim of relief:**

- 15 1. Void the contractual agreement between Uber and/or Mr. Kalanick and Plaintiff.
16
17 2. Economic and non-economic damages of \$50,000.

18 **Regarding the seventh claim of relief:**

- 19 1. Economic and non-economic damages of \$50,000.
20
21 2. Punitive damages.

22 **Regarding all claims of relief:**

1. An order for Defendant(s) Uber to pay Carter's costs of the suit incurred, herein,
including attorney fees to the extent incurred pursuant the work expended for
this action.
2. Equitable recover of Plaintiff's time pursuing this action.
3. Any further relief that this Court deems just and proper.

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DATED: January 2, 2017



Darryl Carter
Appearing Pro Se

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I am the plaintiff in the above captioned action. I have read the foregoing complaint and know the contents and exhibits attached thereto. With respect to the causes of action I allege, the same is true of my knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.


Darryl Carter
Appearing Pro Se